



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

DAVID C. HOLLISTER
DIRECTOR

May 2004

To whom it may concern:

Please find enclosed a Debarment Policy, effective May 17, 2004 regarding violations of the Prevailing Wage Act (Act 166 of 1965; MCL 408.551 et seq.).

This Debarment Policy follows Governor Jennifer M. Granholm's Executive Order 2003-1 and the Department of Management & Budget's Debarment Policy of October 21, 2003, the latter of which cited the Prevailing Wage Act as one of the statutes that Policy was intended to entail.

Please read and digest the enclosed policy and feel free to contact our Division with any questions.

Sincerely,

A handwritten signature in cursive script, reading "John H. Finn".

John H. Finn
Administrator



STATE OF MICHIGAN

JENNIFER M. GRANHOLM
GOVERNOR

DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

DAVID C. HOLLISTER
DIRECTOR

WAGE & HOUR DIVISION DEBARMENT POLICY re PREVAILING WAGE ACT

Effective Date: May 17, 2004

Background: Governor Granholm's first EO (EO 2003-1) mandated that any company doing business with the State of Michigan could be "debarred" or prevented from further business if such a company violated state law(s). To implement EO 2003-1, the Michigan Department of Management & Budget (DMB) on October 21, 2003 issued on its website a document entitled, Debarment Policy---Acquisition Services---DMB. As noted on its website, at the portion thereof, Debarment Policy, the DMB noted, "Today (10-21-03) DMB issued a revised debarment policy in response to EO 2003-1. This policy incorporates four guiding principles: a) written document, b) uniform standards, c) an appeal process, and most importantly, (d) treat every vendor/contractor fairly. Again, while debarment action is rare, this policy continues Michigan's longstanding tradition of insisting on integrity in its procurement process, as envisioned and authorized by the Legislature under MCL 18.1264. (DMB Director, Mitch Irwin).

The Debarment Policy noted above (hereinafter, DMB Policy) notes on page one (1) thereof, under Reasons for Disbarment, 1. "A finding by the Director of DMB, upon recommendation of a division director, that a vendor, or an officer or owner of a 25% or greater share of the vendor, has within the last three (3) years demonstrated a lack of integrity that could jeopardize the state's interest if the state were to contract with the vendor. Factors, which may result in a finding that a vendor is not able to perform responsibly, include, but are not limited to, any of the following:

- d. A conviction of a criminal offense or other violation of other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of DMB indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan, including but not limited to, any of the following offenses under or violation of: .iii. 1965 PA 166, MCL 408.551 to 409.558 (law relating to prevailing wages on state projects) and a finding that the vendor failed to pay the wages and/or fringe benefits due within the time period required...

II. PREVAILING WAGE VIOLATIONS

The Prevailing Wage Act (see last paragraph, above, for citation) requires contracting agents (e.g., Michigan State University) to request the prevailing wage rates for the geographical area and job classifications within a planned project. Upon receiving such rates, the contracting agent (hereinafter, CA) "lets out for bid" among contractors the particular construction project, citing the prevailing wage rates a contractor (hereinafter,

prime) and any subcontractors (hereinafter, sub) used by the prime, must pay workers used on said project. If a bid is not accepted within ninety (90) days, the CA must request new prevailing rates from the Wage & Hour Division of the Michigan Department of Labor & Economic Growth. If upon individual or third party complaint, it is found that a prime and/or sub failed to pay the prevailing wage, said prime or sub is found in violation of the Act. However, absent a finding of monies owed to the worker, the prime and/or sub found in violation of the Act can be assessed no other penalty by the Division.

Implementation of the Debarment Policy by the Wage & Hour Division will provide some greater enforcement powers to the Division. Using the DMB Debarment Policy, as applied to the Prevailing Wage Act, the following applies to prime contractors and/or subcontractors.

III. DEBARMENT PER THE PREVAILING WAGE ACT, PER EO 2003-1 AND DMB POLICY (10-21-03)

1. All contracting agents, contractors and subcontractors having historically had any business and/or jurisdiction with the Wage & Hour Division will be mailed this policy of debarment (hereinafter, policy) by regular U.S. mail to their known business address. Additionally, this debarment policy will be prominently placed on the website of the Division, to wit, www.michigan.gov/wagehour.
2. Any primary contractor or subcontractor found in violation of the Prevailing Wage Act by a determination of the Wage & Hour Division more than two (2) times in a five (5) year period, is deemed in violation of EO 2003-1 and the DMB Policy of October 21, 2003 which provides guidelines and penalties subjecting the guilty party to debarment.
3. Upon the second violation noted in 2 above, a guilty party is to be notified by U.S. mail of such second violation.
4. Any guilty party found in violation of the policy will be given written notice, by U.S. mail of proposed debarment action by the Division containing:
 - A description of the reasons/findings for the proposed debarment.
 - A statement indicating that within twenty (20) calendar days from the date of the notice, the contractor and/or subcontractor may submit, in writing, information in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts and any mitigating circumstances.
 - An explanation that the contractor/subcontractor has twenty (20) calendar days to request, in writing, a hearing with the Division Administrator.
 - A statement that a failure by the contractor/subcontractor to respond with a written request for a hearing within twenty (20) calendar days, will result

in a debarment determination being sent to the DMB Director for action without a hearing.

- A description of the potential implications of debarment.
5. Upon a timely written request for a hearing, the Division Administrator of Wage & Hour shall:
- Conduct such hearing within 30 calendar days.
 - Issue and mail a written hearing determination within 7 calendar days to the contractor/subcontractor and, if containing a debarment determination to the DMB Director.